10736

TRANSCRIPT OF RECORD.

Supreme Court of the United States.

OCTOBER TERM, 1907.

NO. 238.

WALTER M. McCAIN, ET AL.

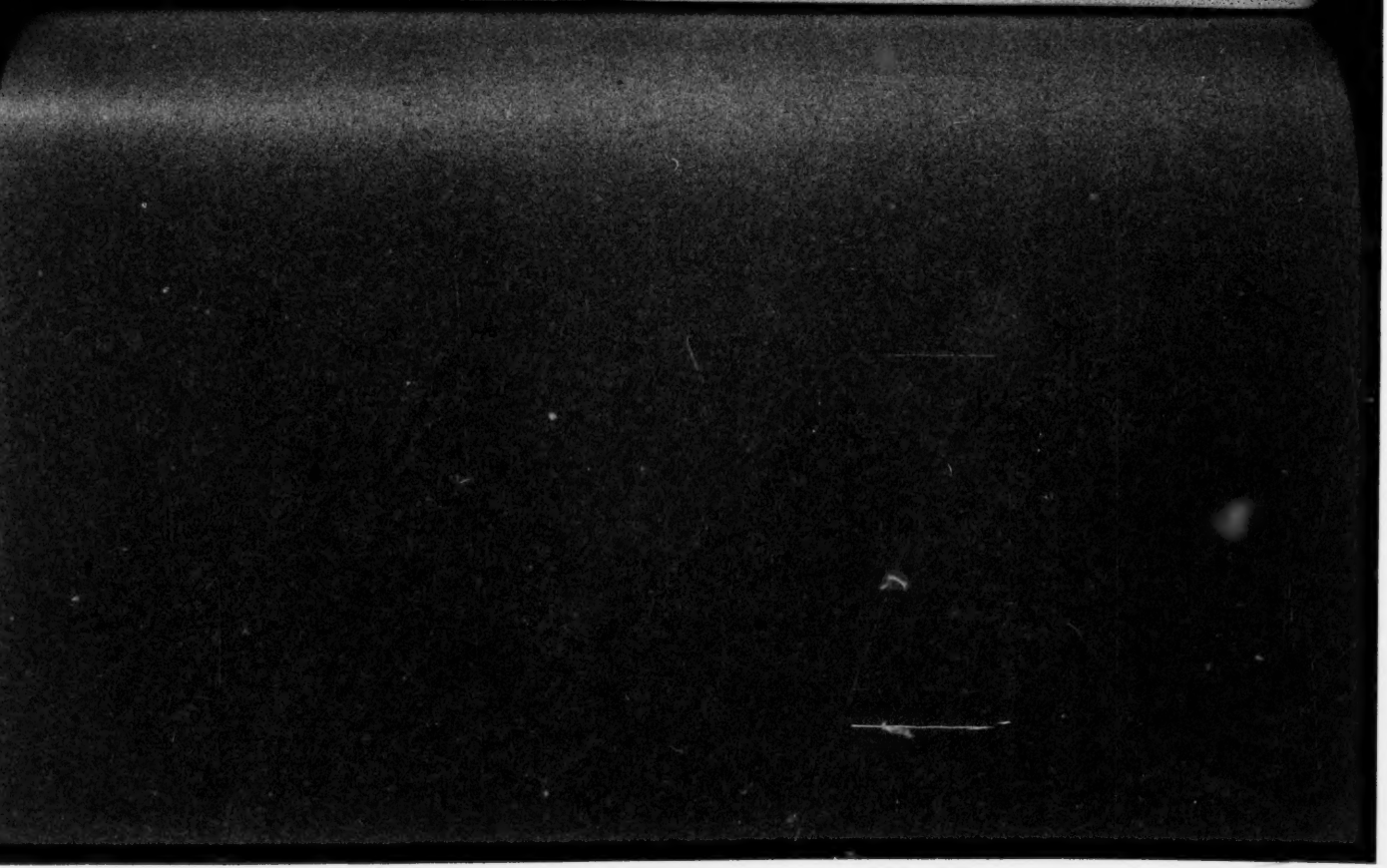
vs.

CITY OF DES MOINES, ET AL.

APPEAL FROM CIRCUIT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF IOWA.

FILED FEBRUARY 5, 1908.

(16,790)



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Pleas in the United States Circuit Court in and for the Southern District of Iowa in a certain cause wherein Walter M. McCain, *et al* were plaintiffs and the City of Des Moines, *et al* were defendants before the Honorable Oliver P. Shiras, District Judge assigned to the Southern District of Iowa, presiding at a term thereof begun and holden in the City of Des Moines, in said District, on the third Tuesday of November, it being the sixteenth day of November, A. D., 1897.

United States Circuit Court, Southern District of Iowa, Central Division.

BE IT REMEMBERED, that heretofore, to-wit:

On the 25th day of October, A. D., 1897, there was filed in the Clerk's office of the United States Circuit Court, Southern District of Iowa, Central Division thereof at Des Moines, in said District, a bill of Complaint by Walter M. McCain, Caroline M. Stewart, Edward R. Mason and the Independent School District of Greenwood Avenue against the City of Des Moines, George Sims and C. D. Boardman, constituting the Board of Public Works of the City of Des Moines, the Des Moines Brick Manufacturing Company and the Incorporated Town of Greenwood Park; that such proceedings were had in said cause under said bill as that afterward, to-wit: on the 10th day of December, 1897, there was issued out of said Clerk's office under the order of said Court a Temporary Restraining Order against the defendants and each of them, restraining them and each of them from doing certain things in said bill of complaint complained of; and such proceedings were had that afterward, to-wit: on the 4th day of January, A. D., 1898, the said cause came on to be heard before the said Circuit Court, the Honorable Oliver P. Shiras, United States District Judge, presiding, upon the complainants' motion for a Temporary Injunction against the defendants and each of them restraining them from doing certain things in said bill of complaint complained of and upon the demurrer of the said defendants and each of them to the said bill of complaint, and the said complainants, by leave of Court first had and obtained, filed an amended and substituted bill of complaint therein, which said amended and substituted bill of complaint was in words and figures following, to-wit:

1

Circuit Court of the United States in and for the Southern District of Iowa, Central Division.

WALTER M. McCAIN, CAROLINE M. STEWART, EDWARD R. MASON, INDEPENDENT SCHOOL DISTRICT OF GREENWOOD AVENUE, Complainants,

vs.

THE CITY OF DES MOINES, GEORGE SIMS AND C. D. BOARDMAN, Constituting the Board of Public Works of the City of Des Moines, DES MOINES BRICK MANUFACTURING COMPANY and THE INCORPORATED TOWN OF GREENWOOD PARK, Defendants.

Amended and Substituted Bill in Equity.

To the Honorable Judges of said Court:

Your orators, Walter M. McCain, Caroline M. Stewart, Edward R. Mason and the Independent School District of Greenwood Avenue, by leave of Court duly entered of record, bring this their amended Bill of Complaint and make the same a substitute for their original Bill of Complaint against the City of Des Moines, George Sims and C. D. Boardman, Des Moines Brick Manufacturing Company and the Incorporated town of Greenwood Park, as defendants, and thereupon your orators complain and say:

That the City of Des Moines is, and at all times mentioned herein has been, a municipal corporation organized and existing under and by virtue of the laws of the State of Iowa as a city of the first class and situated in the County of Polk in said State; that the defendant George Sims and C. D. Boardman are the duly qualified and acting Board of Public Works of said City, with such power and authority as by the Statutes of said State are conferred on the Board of Public Works of a city of the first class;
2 that the Des Moines Brick Manufacturing Company is, and at all times mentioned herein has been, a corporation organized and existing for pecuniary profit under and by virtue of the laws of the State of Iowa; that the Incorporated Town of Greenwood Park is, and at all times mentioned herein has been, a municipal corporation duly organized as an incorporated town under and by virtue of the laws of the State of Iowa, situated in Polk County in said State. Said Incorporated Town of Greenwood Park lies adjacent to and bounds the aforesaid City of Des Moines on the western boundary line thereof.

And further complaining your orators say that they are, and at all times mentioned herein have been, residents and citizens of the aforesaid incorporated Town of Greenwood Park and owners in severalty of certain real estate therein located and described as follows, to-wit: that your orator Walter M. McCain, is the owner of the South East Quarter ($\frac{1}{4}$) of the South East Quarter of Section six (6), Township Seventy-eight (78) Range Twenty-four (24), except a strip off the North side thereof Five Hundred Three (503) feet wide and a strip off the West side of so much thereof as lies South of Ingersoll Avenue, Two Hundred Feet wide, and Ingersoll Avenue, which said real estate has a frontage of One Thousand, One Hundred Twenty (1,120) feet on West Grand Avenue and is, and at all times mentioned herein has been, of the real actual reasonable value of Twenty Thousand Dollars ($20,000). That your orator, Caroline M. Stewart, is the owner of the South Half ($\frac{1}{2}$) of the East One Hundred (100) feet of the West Five Hundred Ninety-one (591) feet of so much of the East Half of the South West

Quarter (¼) of Section Six (6), Township Seventy-Eight
3 (78), Range Twenty-four (24) as lies South of Ingersoll Avenue, which said real estate has a frontage of One Hundred (100) feet on West Grand Avenue and is, and at all times mentioned herein has been, of the actual and reasonable value of Twenty-five Hundred Dollars (2,500). That your orator, Edward R. Mason, is the owner of the West Six and one half (6½) acres of the North Ten (10) acres of the West Half (½) of the East Half (½) of the Northwest Quarter (¼) of Section Seven (7), Township Seventy-eight (78), Range Twenty-four (24), which said real estate has a frontage of Four Hundred Forty-one (441) feet on West Grand Avenue, and is, and at all times mentioned herein has been, of the actual value exceeding Fifteen Thousand Dollars ($15,000). That your orator, The Independent School District of Greenwood Avenue is, and at all times mentioned herein has been a municipal corporation organized and existing under and by virtue of the laws of the State of Iowa and a citizen of said State and that your orator has a certain tract of land in said incorporated Town of Greenwood Park and situated in the Southwest Quarter (¼) of Section Six (6), Township Seventy-eight (78), Range Twenty-four (24) West of the Fifth P. M., which said real estate has a frontage on West Grand Avenue of Eighty-two and One-half (82½) feet, and is, and at all times mentioned herein has been, of the actual value of Eight Thousand Dollars ($8,000.00).

And further complaining your orators state that this is a controversy and suit of civil nature arising under the laws of and the Constitution of the United States, and that the matter and amount in dispute, to-wit: the jurisdiction and power of the City of Des Moines to exercise the functions of government and taxation over the property of your orators, as hereinafter more
4 fully shown, exceeds in value and amount exclusive of interest and costs as to each of your orators the sum of Two Thousand Dollars.

Your orators further state: that on, and for many years prior to March 3d, 1890, the general laws and statutes of the State of Iowa prescribed the manner and the regular and orderly course of procedure by which municipal corporations of the class and character of the said incorporated Town of Greenwood Park and of the said City of Des Moines, could be annexed and consolidated into a single municipal corporation, said laws being uniform in their effect and operation, and giving to each municipal corporation so desiring to be consolidated or annexed, powers and rights to negotiate the terms and conditions of such annexation, and requiring that the electors of each of said municipal corporations should, by a majority vote, favor such annexation before the same shall become operative and effectual and binding; that said general laws and

statutes, as aforesaid, are still in force and unrepealed and unmodified, and of the same effect as on and prior to the said 3d day of March, A. D., 1890; that the Constitution of the State of Iowa on and prior to the aforesaid date, provided, and still provides, as follows:

"All laws of a general nature shall have a uniform "operation. The general assembly shall not grant "to any citizen or class of citizens privileges or im- "munities which, upon the same terms, shall not "equally belong to all citizens.

"The legislature shall not pass local or special "laws in the following cases: for the assessment "and collection of tax for State, County or road "purposes; for laying out, opening and working "roads or highways; for changing the names of per- "sons; for the incorporation of cities and towns; "for vacating roads, town plats, streets, alleys or "public squares; for locating or changing County "Seats. In all the cases above enumerated, and in "all other cases where a general law can be made "applicable, all laws shall be general, and of uniform "operation throughout the State."

That by a certain Act of the 23d General Assembly of the State of Iowa approved March 3d, A. D., 1890, being an Act entitled, "an Act to extend the limits of cities and for other purposes incident thereto," it is and was provided that the boundaries of all cities in the State of Iowa which had, by the State census of 1885, a population of 30,000 or more are hereby extended two and one half miles in each direction from the present boundaries of said cities, such extension being so made as to leave the boundaries thereby created in a perfect rectangle. That the territory embraced within said extended boundaries, whether the same is contained in cities, incorporated towns or otherwise, shall be and become a part of the city and subject to its jurisdiction and authority; and the corporate character of any annexed territory within the extended boundaries hereby specified shall cease and determine.

Your orators show that the City of Des Moines was the only city of the State of Iowa to which the aforesaid Act was applicable in that it was the only city of said State which, by the State Census of 1885, had a population of 30,000 or more; that the purpose, effect and result of said Act, if the same was valid and operative, was to dissolve and destroy the incorporated Town of Greenwood Park, and to annex and incorporate to the City of Des Moines, all of the territory contained in said incorporated Town of Greenwood Park including

the lands and properties hereinbefore described and belonging to your orators, as hereinbefore set forth. That the effect of said Act, if valid and operative, was and would be to give the City of Des Moines authority and jurisdiction over all of said territory of the incorporated Town of Greenwood Park including the lands of your orators for purpose of taxation and for the purpose of establishing, opening, vacating, changing and improving streets and of making special assessments for defraying and meeting the expenses of paving, grading, sidewalks, curbing and
6 sewering within said territory and in all respects to exercise the functions of government and taxation thereover and to levy against your orators for and on account thereof assessments to meet the expenses of such improvements within said territory, and also general taxes to meet the current expenses of government of the city of Des Moines, including the payments of interest on debts previously contracted by such city and the payments of said principal indebtedness as the same shall mature and accrue

And your orators further show that the aforesaid Act of the 23d General Assembly was and is unconstitutional and void and repugnant to the Constitution of the State of Iowa and unto the Constitution of the United States in this that it is a local, special law for the incorporation of cities and amending and controlling the previous laws and ordinances incorporating the said city of Des Moines.

That it creates in effect a corporation by the enactment of special laws. That it is a law that did not have uniform operation and undertook to grant to the citizens of the municipal corporation of the city of Des Moines as the same existed on and prior to the 3d day of March, 1890, privileges and immunities, which upon the same terms are not granted to all of the citizens of the State of Iowa or to your orators, and that said Act has been by the Supreme Court of the State of Iowa adjudged to be unconstitutional and void.

That the defendant, the incorporated Town of Greenwood Park, has never been dissolved and is entitled to exercise all the functions of government and taxation ordinarily appertaining to such incorporated towns over its territory as the same existed prior to said 3d day of March, A. D., 1890; but that in compliance with and in pursuance of said pretended and void Act of said
7 23d General Assembly, the said incorporated Town of Greenwood Park has ceased to exercise the aforesaid functions and rights of government, regulation and taxation over the said territory and over the aforesaid property of your orators; and that notwithstanding the aforesaid Act of the 23d General Assembly is wholly void and of no effect, the defendant City of Des Moines, and the Defendants, the Board of Public Works of the

City of Des Moines, are pretending and undertaking to exercise the aforesaid functions of government authority and general taxation over the said territory of Greenwood Park and over the said lands and properties of your orators hereinbefore described. And are also pretending and undertaking to enter upon the territory of the incorporated Town of Greenwood Park and to make and cause to be made such improvements in the way of grading, paving, sidewalks, guttering, curbing and sewering as the said city, by and through its Council and Board of Public Works, shall elect and direct under and in pursuance of statutes applicable to the said City of Des Moines. But your orators show that all of the aforesaid acts of the City of Des Moines asserting rights of government, or taxation, or jurisdiction for purposes of special improvements are without rightful authority, are unconstitutional and void and contrary to the aforesaid statutes and provisions of the State of Iowa.

That the sole and only reason and warrant for the incorporated Town of Greenwood Park yielding and submitting to the acts of the City of Des Moines in exercising the functions of municipal government and taxation over the territory of the said incorporated Town of Greenwood Park was through and on account of the supposed force of the aforesaid void and unconstitutional Act of said 23d General Assembly. That the sole and
8 only warrant and authority under and by virtue of which said City of Des Moines originally exercised and now exercises over the said incorporated Town of Greenwood Park, said functions of municipal government and taxation were under and by virtue and by color of authority of the aforesald unconstitutional and void Act of the said 23rd General Assembly of the State of Iowa. That the complainants have none of them acquiesced in or submitted or agreed to the aforesaid acts of Greenwod Park in yielding its municipal functions to the City of Des Moines or to the acts of said city in assuming and undertaking to exercise functions of municipal government and taxation over the said territory of Greenwood Park to the property of complainants, but that on the contrary, complainants at that time protested and resisted in every peaceful and orderly manner the aforesaid acts of said municipal corporation.

And further complaining your orators state: that the citizens of Greenwood Park have never in any manner assented or acqueisced in or agreed to said acts of the City of Des Moines, but that the same have been and still are exercised over the citizens and property of Greenwood Park without their consent and without in any manner permitting the citizens of Greenwood Park by orderly election or otherwise to determine whether said pretended acts of annexation should be operative or not.

And further complaining your orators state: that the aforesaid enactment of the 23rd General Assembly of the State of Iowa and the acts of defendants under color of authority thereof are contrary to and in violation of Section One, Article 14 of the Constitution of the United States in that such acts deprive your orators of their property without due process of law and deny to
9 your orators the equal protection and operation of the law, and further that said acts are contrary to and in violation of Article 5 of the Constitution of the United States in that thereby the property of your orators is taken for public use without just compensation.

And further complaining your orators state: that the City of Des Moines, through its Board of Public Works and council, and on the 9th day of September, A. D , 1893, undertook and pretended to enter into a contract with the defendant Des Moines Brick Manufacturing Company to lay a pavement upon a public highway extending across and through the said Town of Greenwood Park for a distance of one mile at an expense approximating $50,000.00 the cost of which was to be assessed upon the property of your orators and other citizens and property owners of the said Town of Greenwood Park, residing along and abutting upon said highway which was commonly known as Grand Avenue. The said contract was entered into by the City of Des Moines, as aforesaid, under color of authority of the said Act of the 23rd General Assembly of the State of Iowa, and that the said contract was and is wholly void in that the said Annexation Act was unconstitutional and that the City of Des Moines acquired thereby no power, authority or right to contract with reference to said highway within the limits of said incorporated Town of Greenwood Park. That thereafter and on or about the 20th day of September, A. D., 1897, the defendant Des Moines Brick Manufacturing Co. against the express objection and protest of your orators undertook and pretended to enter upon the work of constructing said pavement and under and by virtue of said pretended contract with the City of Des Moines.

And further complaining your orators say: that the Board
10 of Public Works and the said City of Des Moines will, when said pavement is completed, proceed to levy a tax upon the property of your orators and others owning property abutting upon said street and pavement for the cost thereof, as provided in said pretended contract between said Brick Manufacturing Company and the said City of Des Moines which tax will become a cloud and ostensible lien upon the property of your orators and of others owning property on said street, and will be to your orators and others an irreparable injury.

And further complaining your orators state: that at the time of the pretended extension of the city limits and jurisdiction of the

City of Des Moines over the said Town of Greenwood Park, the said Town of Greenwood Park was exclusively an agricultural community and that there was no advantage or necessity whatever for the annexation of said Town of Greenwood Park to the City of Des Moines.

That the said Town of Greenwood Park had at the time of the passage of said act of March 3rd 1890, an area of one mile east and west and about one and one-half (1½) miles north and south. That there were at that time but two or three highways within the whole territory. One street or highway running from the eastern to the western border thereof which was popularly known as Greenwood Avenue, and one public highway upon the eastern border thereof known as Western Avenue, it being upon the western boundary of said City of Des Moines One public highway running through the town from the north to the south about the center thereof and one public highway on the western boundary thereof. That none of the property within said territory had been platted into lots by laying out of streets and alleys, and that the streets above mentioned had been, prior to the incor-
11 poration of said Town of Greenwood Park, public roads or highways that had been made such by the acts of the proper officers of Polk County, Iowa, and which were prior to the incorporation of the Town of Greenwood Park, under the jurisdiction of officers of Polk County.

And further complaining your orators say: that on the 3rd day of March, 1890, and at the time the said City of Des Moines entered upon and commenced to usurp municipal functions of government and taxation over the said Town of Greenwood Park, the said Town of Greenwood Park was wholly free from municipal indebtedness of every kind and character whatever; that the the said City of Des Moines has incurred no indebtedness whatever on account of or for the benefit of Greenwood Park. That on the 3rd day of March, 1890, and at all times since, the said City of Des Moines was and now is indebted on account of outstanding obligations in a sum exceeding One Million Dollars ($1,000,000.00), which said indebtedness is the full limit which the said City of Des Moines is authorized to contract as a municipal corporation.

And further complaining your orators say: that not withstanding the provisions contained in Section Two of said Act of the 23rd General Assembly of the State of Iowa entitled, "An Act to extend the limits of cities and for other purposes incident thereto," which undertook to exempt the territory of Greenwood Park from taxation on account of existing indebtedness of the said City of Des Moines, the said 23rd General Assembly thereafter and on the 25th day of March, 1890, passed another Act applicable to said City of Des Moines and entitled, "An Act to authorize certain

cities of the first class to issue bond and to provide for the payment of principal and interest," which said Act was duly approved by the Governor of the State of Iowa and is operative and in effect as applied to cities of the first class, and which said Act
12 modifies and amends the former Act of March 3rd, 1890, so that the said City of Des Moines was authorized to and has refunded its entire debt, as aforesaid, as of a date subsequent to the pretended annexation of Greenwood Park to the City of Des Moines. And under color of authority of the aforesaid statutes, the said City of Des Moines threatens to levy taxes and has heretofore levied taxes upon the property of your orators and others situated in the said Town of Greenwood Park for the payment of the said indebtedness of the said City of Des Moines which accrued and existed prior to the said 3rd day of March, 1890, all of which acts of the City of Des Moines under color of authority of said statutes of the State of Iowa are contrary to the Constitution of the United States and to Section 1 of Article 14 thereof in that it deprives your orators of their property without due process of laws and denies to your orators the equal protection and operation of the law; and also contrary to Article 5 of the Amendment to the Constitution of the United States in that the property of your orators is taken without compensation.

Further complaining your orators say: that at no time since the third day of March, 1890, up to and including the present time, has the City of Des Moines expended upon the streets and alleys or highways or upon any other work of internal improvement within the said Town of Greenwood Park any sum of money, except possibly the nominal sum of not to exceed $500.00, which has been expended for smoothing the surface of the streets within said territory. That no money has been expended by the said City of Des Moines for police protection within said territory nor for any other purpose except for lighting the said streets, and that such expenditure for lighting has not exceeded $400.00 per year. That at and prior to the
13 third day of March, 1890, there was in the hands of the treasurer of the said Town of Greenwood Park and in the hands of the treasurer of the County of Polk in the State of Iowa, who was by law of said State of Iowa the collector of taxes for the said Town of Greenwood Park, a large sum of money, to-wit: The sum of approximately $1,000, all of which money was, under the provision of said Act paid over to the treasury of the City of Des Moines by the said Treasurer of the said Town of Greenwood Park and the said County Treasurer. And the said City of Des Moines took possession of the personal property of the said Town of Greenwood Park consisting of a road grader and other tools and implements

used for making the streets in the said Town of Greenwood Park and removed the same from the said Town of Greenwood Park, appropriating the same to the use of the said City of Des Moines in other parts of said city than that of the Town of Greenwood Park, all of which acts were done under the authority of the said act above referred to.

And further complaining your orators say: that since the approval of said Annexation Act of March 3d, 1890, up to and included in the present year, the said City of Des Moines has levied upon the territory and property of said incorporated Town of Greenwood Park, including the property of your orators, for the general fund of the City of Des Moines a sum exceeding Twenty-five Hundred Dollars ($2500) per annum, and that the only return to the said Town of Greenwood Park for the money and property received as aforesaid, has been an expenditure of about Four Hundred Dollars ($400.00) per year for lighting said Town and a total expenditure as aforesaid of about Five Hundred Dollars ($500.00) since said 3d day of March, 1890, on the streets of said incorporated Town of Greenwood Park.

14 And further complaining your orators say: That the said City of Des Moines has caused to be expended, in the nature of improvements a sum not exceeding Thirty-eight Hundred Dollars ($3800.00) for curbing along Grand Avenue in Greenwood Park since the said 3rd day of March, A. D., 1890, and a sum not exceeding Nine Thousand Dollars ($9,000.00) for sewer within said territory, and that the aforesaid are the sole and only improvements therein made by the City of Des Moines. That the cost of the aforesaid improvements has been levied upon the property of Greenwood Park benefitted thereby, and that the owners of the property against which the special levies have been made, have voluntarily paid therefor, except the sum of about Twelve Hundred Dollars ($1200 00) still remaining due on said curbing and except the sum of about Twenty-five Hundred Dollars ($2500 00) still remaining due on said sewering and that as to the amounts still remaining due as aforesaid, the owners of property, against whom the same have been assessed, have voluntarily waived all objections to said assessments and have voluntarily accepted said improvents for and on account of said property and have agreed to pay therefor.

And further complaining your orators state: that by reason of the facts herein set out the City of Des Moines has suffered and would suffer no prejudice by a judgment and decree herein, re-establishing the incorporated Town of Greenwood Park, and enjoining said City of Des Moines from exercising further municipal jurisdiction and authority over the territory of the said incorporated Town of Greenwood Park. That on the contrary,

the said incorporated Town of Greenwood Park and your orators and all other citizens and property owners therein have suffered and will continue to suffer great prejudice and wrong, by reason of an exercise by the City of Des Moines of the aforesaid function of municipal government and taxation, which said functions
15 have been exercised in the past and will be in the future oppressively as against the citizens of Greenwood Park and in the interest of the said original City of Des Moines as it existed prior to the said Act of March 3, 1890, and that the City of Des Moines ought to account to the said incorporated Town of Greenwood Park for all money received by said City of Des Moines from the territory within said Town of Greenwood Park in the way of general taxation in excess of the money expended by the City of Des Moines in said territory and for the benefit of said territory for fire and police protection and for lighting and for other purposes, as hereinbefore stated and for all property and money received from the officers of Greenwood Park and Polk County.

And further complaining your orators state: that they bring this bill and beg leave to prosecute the same for and on behalf of themselves and for and on behalf of the said incorporated Town of Greenwood Park and of all citizens, residents and owners of property therein situated in like condition as your orators and who may hereafter join themselves as complainants herein and pray the benefit of the decree of this court herein.

Inasmuch as your orators are wholly remediless at law, your orators pray that the defendants, the City of Des Moines and the Board of Public Works thereof, all officers, agents and employees of said City be perpetually enjoined from exercising over the territory of the incorporated Town of Greenwood Park any function of municipal government or authority or jurisdiction for the purpose of taxation or for works of internal improvement therein.

That said defendants be enjoined from levying or undertaking to levy any taxes special or general, upon the property of
16 your orators in said territory of the incorporated Town of Greenwood Park, and the said defendant, City of Des Moines, be enjoined from levying any taxes on account of interest or principal of the aforesaid indebtedness of said city which existed on the 3d day of March, A. D., 1890, and that the said defendants be enjoined from interfering with the officers of said incorporated town of Greenwood Park or obstructing said officers in the administration of the municipal affairs of said town.

That the said incorporated Town of Greenwood Park be authorized and enjoined to exercise for its own future benefits under the Statutes of the State of Iowa, all functions of municipal government, taxation and works of internal improvement in the same

manner and to the same extent as the said functions have been exercised by said defendant prior to the 3d day of March, 1890.

That the defendants, the City of Des Moines, George Sims and C. D. Boardman, constituting the Board of Public Works, be perpetually enjoined from making any levy on the property of your orators, or on the property abutting upon said Grand Avenue in Greenwood Park, for or on account of the paving by the defendant, the Des Moines Brick Manufacturing Company.

And that the said defendant be perpetually enjoined from issuing to said Des Moines Brick Manufacturing Company any assessment certificates on account of said paving.

That the said defendant, the incorporated Town of Greenwood Park, be authorized and empowered to prosecute against the
17 said City of Des Moines, its ancillary bill for and on account of the matters set forth in this your orators' Bill of Complaint and such other relief as equity and good conscience may require.

May it please your Honors to grant unto your orators a writ of subpœna running unto the said defendants and each of them, and demanding them at a time certain therein named, to appear and answer herein, but not under oath (answer under oath being expressly waived) your orators Bill of Complaint herein.

(Signed) WISHARD & CLARK,
Solicitors for Complainant.

(Signed) WM. G. CLARK,
Of Counsel.

UNITED STATES OF AMERICA,
Southern District of Iowa,
Polk County. } ss.

I, Edward R. Mason, being first duly sworn on oath depose and say that I am one of the Complainants herein, that I have read the foregoing bill of complaint and know the contents thereof, that the statements therein contained are true, except those matters therein stated on information and belief, and those I believe to be true.

[Signed] EDWARD R. MASON.

[SEAL] Subscribed in my presence and sworn to before me by the said Edward R. Mason, this 7th day of January, A. D., 1898.

[Signed] MAZE VERNON,
Notary Public in and for Polk County, Iowa.

(Endorsed:) No. 2355 Eq. U. S. Circuit Court, Southern District of Iowa, Cent. Division. W. M. McCain, *et al. vs.* City of Des Moines, *et al.* Amended and Substituted Bill. Filed by leave of Court, January 11, 1898. E. R. Mason, Clerk.

And said cause was submitted to the said Court upon the amended and submitted bill of complaint, as above set forth, and upon the defendants' demurrer, thereto or so much of defendants' demurrer as demurred to the jurisdiction of the Court, and upon the application of the complainants for a Temporary Injunction against the said defendants restraining them from doing the things therein complained of, and which said demurrer is in words and figures following, to-wit:

In the Circuit Court of the United States in and for the Southern District of Iowa, Central Division.

WALTER M. McCAIN, *et al.*
vs.
CITY OF DES MOINES, *et al.*
} No. 2355, Equity.

Demurrer of the Defendant the Des Moines Brick Manufacturing Co. to Amended and Substituted Bill.

The defendant The Des Moines Brick Manufacturing Company by protestation not confessing all or any of the matters or things in the said bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, doth demur to the said bill and for cause of demurrer doth say:

First. That the said complainants have not by their said bill made such a case as entitles them in a court of equity to any relief against this defendant as to the matters contained in the said bill or any such matters.

Second. That the said bill is multifarious in that it sets up various separate and distinct alleged causes of action
19 against the City of Des Moines, its officers, agents and employes, to prevent them from further exercising the jurisdiction of the City of Des Moines as a municipal corporation over the territory formerly embraced within the limits of the incorporated Town of Greenwood Park, and also an alleged cause of action in favor of each of the complainants against the defendant the Des Moines Brick Manufacturing Company and the City of Des Moines and its officers, founded upon the claim that the paving contract referred to in complainants' bill is invalid and has not been faithfully performed, and that therefore each of the complainants is entitled to an injunction against the levying of any assessment on account of such paving against his property abutting thereon.

Third. Because it appears upon the face of the complainants' said bill that all of the parties to this suit are citizens of the State of Iowa, and that this suit does not involve any question arising under the Constitution or laws of the United States conferring jurisdiction upon this Court.

An for further and more specific grounds of demurrer this defendant avers as follows, to-wit:

Fourth. If or in so far as the said bill of complaint is to be treated and regarded as a bill to enjoin the defendant the City of Des Moines, its officers, agents and employes from exercising over the territory formerly embraced in the incorporated Town of Greenwood Park the functions of municipal government, then it clearly appears that this Court has no jurisdiction to hear or determine the said matters, but that the sole and exclusive remedy is an action at law and by an action prosecuted in the name of the state, and that the same cannot be heard or determined at the suit of a private party.

Fifth. If or in so far as the said bill of complaint is to be treated and regarded as a bill to enjoin the defendants from levying a tax, special or general, upon property within the territory formerly embraced in the incorporated Town of Greenwood Park and from interfering with the officers of the said town or obstructing the same in the administration of its municipal affairs, then it clearly appears that this Court has no jurisdiction to hear or determine the said matters, but that the sole and exclusive remedy is an action at law and by an action prosecuted in the name of the state, and that the same cannot be heard or determined at the suit of a private party.

Sixth. If or in so far as the said bill of complaint is to be treated and regarded as a bill to authorize and enjoin the said incorporated Town of Greenwood Park to exercise the functions of municipal government to the same extent as they were exercised by it prior to the 3rd of March, 1890, then it clearly appears that this court has no jurisdiction to hear or determine the said matters, but that the sole and exclusive remedy is an action at law and by an action prosecuted in the name of the State, and that the same cannot be heard or determined at the suit of a private party.

Seventh. If or in so far as the said bill of complaint is to be treated and regarded as a bill for a decree to authorize and empower the said incorporated Town of Greenwood Park to prosecute against the defendant the City of Des Moines its ancillary bill on account of the matters set forth in the complainants' bill of complaint in this cause, then it clearly appears that this court
21 has no jurisdiction to hear or determine the said matters, but that the sole and exclusive remedy is an action at law and by an action prosecuted in the name of the state, and that the same cannot be heard or determined at the suit of a private party.

Eighth. If or in so far as the said bill of complaint is to be treated and regarded as a bill to enjoin the City of Des Moines and the Board of Public Works of said City from levying an assessment against the property of complainants on account of the

work of paving described in said bill, for that the said controversy is one solely between citizens of the same state and does not involve any question arising under the Constitution or the laws of the United States sufficient to confer jurisdiction upon this court in the absence of diverse citizenship, and for that under the statutes of the State of Iowa in such cases made and provided a remedy is accorded to the complainants for the correction of any wrongs arising out of any errors or irregularities in connection with the making of the said assessment, while the complainants' bill does not aver that the complainants will be or have been deprived of these remedies, or that they have been exhausted, or that they will not be entirely adequate

WHEREFORE this defendant prays the judgment of the Court whether it shall be compelled to further answer said bill, and further prays to be dismissed with its costs.

[Signed.] N. T. GUERNSEY,
Solicitor for Des Moines Brick Manufacturing Co., Defendant.

I, N. T. Guernsey, of Counsel for the Des Moines Brick Manufacturing Company, defendant in the above entitled cause,
22 do hereby certify that the foregoing demurrer to the bill of complaint is in my opinion well founded in law.

[Signed.] N. T. GUERNSEY.

United States of America, } ss:
Southern District of Iowa. }

I, Martin Flynn, being duly sworn on oath depose and say that I am the president of the Des Moines Brick Manufacturing Company, defendant in the above entitled cause. I further state that the demurrer to the bill of complaint is not interposed for the purpose of delay.

[Signed.] MARTIN FLYNN.

[SEAL] Sworn to before me and subscribed in my presence by the said Martin Flynn on this 11th day of January, A. D., 1898.

[Signed] GEO. R. SANDERSON,
Notary Public in and for Polk County, Iowa.

(Endorsed on cover:) No. 2355, Equity. U. S. Cir. Court, Southern Dist. of Iowa. Walter M. McCain vs. City of Des Moines, et al. Demurrer to Amended and Substituted Bill. Filed January 11th, 1898. Ed. R. Mason, Clerk. N. T. Guernsey, Atty. for Defendants.

And the Court after having duly considered the same and being sufficiently advised in the premises filed in said cause its written opinion holding that the Court could not take jurisdiction of the case and for that reason denied the complainants' motion for a Temporary Injunction, set aside the restraining order theretofore entered in said cause and sustained the defendants' demurrer to

the said bill of complaint as to *the third* division thereof, which sets up and demurs to the complainants' bill of complaint because there was no jurisdiction in said Court to try said cause,
23 which said written opinion is in words and figures following, to-wit:

In United States Circuit Court in and for the Southern District of Iowa, Central Division.

WALTER M. McCAIN, ET AL
vs.
THE CITY OF DES MOINES, ET AL. } Equity.

Submitted on motion for issuance of preliminary Writ of Injunction and demurrer to amended bill.

WISHARD & CLARK,
For Complainants.
N. T. GUERNSEY,
For Defendants.

SHIRAS, *District Judge.*

In the year 1890 the General Assembly of the State of Iowa passed an Act entitled, "An Act to extend the limits of cities and for other purposes incidental thereto," which by its terms was limited to cities which by the census of 1885 were shown to have a population of 30,000 or more. Acting under the provision of this Act the City of Des Moines exercised corporate jurisdiction over the territory which had formerly been included within the limits of the incorporated Town of Greenwood Park, and the Board of Public Works of the City entered into contracts with third parties for the paving of streets extending through the Town of Greenwood and the City also refunded its public debt by the issuance of bonds under the provisions of an act of the State Legislature approved March 25th, 1890. In March, 1894, there was brought in the District Court of Polk County, Iowa, a proceeding by quo warranto in the name of the State of Iowa ex rel A. G. West against the City of Des Moines, in which it was claimed that the Act of the General Assembly extending
24 the City limits was in its nature special legislation and therefore void under the provisions of the State Constitution which forbids the enactment of special laws for the incorporation of towns and cities and a judgment of ouster was prayed against the City of Des Moines for the purpose of preventing it from further exercising governmental authority over the territory added to the City under the Act of March, 1890. The case was carried to the Supreme Court of the State, wherein it was held that the legislative Act was clearly unconstitutional, because its terms were such that it could only apply to the City of Des Moines and it was therefore in effect the same as though that city had been named in the Act as the corporation intended to be affected thereby and hence the Act was special in its nature and

therefore within the constitutional inhibition. The Court further held, however, that the delay in instituting proceedings, coupled with the fact that many and large interests had become involved and would be affected by a judgment of ouster, constituted ground for estopping the attack upon the legality of the extension of the city limits and the decree of ouster was refused. State ex rel West v. City of Des Moines, 65 N. W. Rep., 818.

In October, 1897, the present proceedings were commenced by the complainants who are residents and property owners within the territory formerly constituting the Town of Greenwood and now within the limits of the City of Des Moines as defined in the Act of the Legislature, the defendants named in the bill being the City of Des Moines, the members of the Board of Public Works of the city, the Des Moines Brick Manufacturing Company and the Incorporated Town of Greenwood Park.

25 The bill recites the facts upon which it is claimed that the legislative Act is unconstitutional, avers that the former authorities of the Town of Greenwood Park have ceased to act; that the City of Des Moines is exercising jurisdiction over the territory of Greenwood Park and through its Board of Public Works has contracted for a large amount of paving to be done in the streets extending through the added territory; that for the cost thereof the city will assess and levy heavy taxes upon the property of complainants; that the city will continue to exercise municipal authority over such territory and will subject the property and the property owners therein to heavy taxes to pay the refunded city debt; that thereby the property of complainants will be taken without due process of law and in violation of the Federal Constitution, wherefore it is prayed that this Court will perpetually enjoin the City of Des Moines and its Board of Public Works from exercising over the territory of Greenwood Park any function of municipal government, or authority or jurisdiction for the purpose of taxation or for the work of internal improvement therein, or from levying any taxes special or general upon the property within said town or from interfering with the officers of said incorporated Town of Greenwood Park in the administration of its municipal affairs; that the incorporated Town of Greenwood Park be authorized and enjoined to exercise for its own future benefits and functions of municipal government, taxation and the carrying on of works of internal improvement included and said Town be authorized to prosecute its ancillary bill against the City of Des Moines for settlement of the matters averred in the bill.

26 The bill on its face shows that the several parties named as complainants and defendants are all citizens of Iowa or corporations created under the laws of that State and hence jurisdiction in this Court cannol be assumed on the ground

of diverse citizenship. In support of the Federal jurisdiction it is averred in the bill that the controversy is one arising under the laws and constitution of the United States; that the Acts of the City are such that they deprive complainants of their property without due process of law and deny them the equal protection of law and take the property of complainants without due compensation, all of which is alleged to be in contravention of the Federal Constitution. The averments to the effect that the controversy is one arising under the Federal Constitution or laws, or that the parties are denied due process of law and the like are merely conclusions of law, and the court must look to the facts averred in the bill to see whether they support the conclusions sought to be based thereon, for unless the facts averred show a ground of jurisdiction, it will not be infered from mere averments of legal conclusions.

Do the facts averred show that the controversy between the parties is based upon any provision of the Federal Constitution or laws, so that it can be said that the case is one arising under the same.

The real gist of the controversy is the question whether the corporate limits of the City of Des Moines have been in fact extended over the territory formerly constituting the Town of Greenwood Park, so that the city, through the proper authorities, can lawfully control the extension and paving of the streets in that territory and impose taxes on the property therein for that and other municipal purposes. If the City of Des Moines has acquired the right to exercise municipal control for the purposes named
27 over the territory in question, then it is clear that the complainants are not entitled to a decree forbidding the City of Des Moines from continuing to exercise this control over such territory, nor are they entitled to a mandatory injunction compelling the former corporation of Greenwood Park to re-assume the exercise of corporate power over such terrritory, nor do they show themselves entitled to a decree forbidding the City of Des Moines from levying taxes on their property to meet corporate expenses. The pivotal point, therefore, in the controversy is this question whether the city of Des Moines can lawfully exercise its municipal authority over the territory of Greenwood Park as being part of the City of Des Moines. There is no provision of the Federal Constitution or laws which will be involved in the solution of this question. The determination thereof depends wholly upon the construction of the State Constitution and laws and it is a question upon which the decision of the Supreme Court of the State is absolutely binding upon this court. The powers that may be lawfully exercised by the City and the extent of the territory over which such powers may be exercised are questions depending upon

the laws of the State of Iowa, under which the corporation was originally created and which authorized the extension of the city limits as need therefore may arise, and thus it appears that the case is not based upon any right created or immunity guaranteed by the Federal Constitution or laws. Thus in *Starin vs. New York*, 115 U. S., 248, it is said: "The character of a case is deter-
" mined by the questions involved. *Osborn vs. Bank of the United*
" *States*, 9 Wheat, 637,824. If from the questions it
28 " appears that some title, right, privilege or immunity, on
" which the recovery depends, will be defeated by one
" construction of the Constitution or a law of the United States,
" or sustained by the opposite construction, the case will be one
" arising under the constitution or the laws of the United States,
" within the meaning of that term as used in the act of 1875;
" otherwise not." The question involved in that case was whether the City of New York had, under its charter, the exclusive right to establish ferries between Manhattan Island and the shores of Staten Island. The Supreme Court held that this question depended upon the construction of the Charter and that it did not involve a Federal question and hence the United States Circuit Court court could not take jurisdiction thereof.

In *Shreveport vs. Cole*, 129 U. S., 36, it was held that, "Unless
"this suit was one arising under the Constitution or laws of the
"United States, the Circuit Court had no jurisdiction, and if it
"did not really and substantially involve a dispute or controversy
"as to the effect or construction of the Constitution or some law,
"upon the determination of which the recovery depended, then it
"was not a suit so arising." Applying this test to the present case, what is the result? There can be no question that the complainants herein could have brought the suit in the State Court had they chosen that forum, can there be any question that they could have presented every ground they rely upon as a foundation for the claim that the asserted extension of the corporate limits and corporate powers of the City of Des Moines over their property is illegal and therefore invalid, without quoting any section or clause of the Federal Constitution or laws? Is it not clear that whatever Court undertakes to pass upon the rights sought to be enforced in this case must solve the problems by a construction of the State Constitution and laws, and that in determining the pivotal question whether the property formerly included within the Town of Greenwood Park is now within the limits and subject to the control of the City of Des Moines, no clause or provision of the Federal Constitution or laws will be referred to or be brought up for consideration. It must then be held that this case is not one wherein the rights of the complainants to ask a decree restraining the City of Des Moines from continuing to exercise

corporate authority over the territory in question is based upon any provision of the Federal Constitution or laws and as the right of recovery or to the relief sought would not be affirmed by one construction or denied by another construction of the Federal laws, it cannot be rightfully said that the controversy is one arising under the Federal Constitution or laws and jurisdiction in this Court cannot be maintained on that ground.

Equally unavailing are the general averments that unless restrained, the City of Des Moines will continue to exercise its corporate authority over the property of complainants; will continue the work of improving the streets in the territory of Greenwood Park and will levy taxes on the property therein for the payment of street improvements and of the City debt, and that thereby the property of complainants will be subjected to burdens without due process of law and be taken without compensation It is open to complainants to attack the validity of the asserted extension of the City limits in the State Courts. unless that question is settled by the decision of the Supreme Court of Iowa in the case already cited. There is no provision in the laws of Iowa which preclude the complainants from obtaining a hearing upon all the questions which are presented by the bill filed in this suit. Of a case brought for that purpose the State Court would have jurisdiction. If in the progress thereof the complainants should seek to rely upon any right or immunity granted by the Federal Constitution or laws, the State Court could give them the full benefit thereof, or if such benefit was refused. the parties could carry the question before the Supreme Court of the United States and obtain protection therefrom. Thus in *New Orleans vs. Benjamin*, 153 U. S, 411, a case which in some of its features is similar to the one now under consideration, it was held that the Circuit Court had not jurisdiction, it being therein said that "Ordinarily the question of the repugnancy a State Statute to the "impairment clause of the Constitution is to be passed upon by the "State Courts in the first instance, the presumption being in all cases "that they will do what the Constitution and laws of the United "States require, *Chicago & Alton R. R. Co vs. Wiggins Ferry Co.*, "108 U. S. 18; and if there be ground for complaint of their "decision, the remedy is by writ of error under Section 709 of the Revised Statutes." It is not claimed or averred in this bill, nor could it be so claimed rightfully, that under the Constitution and laws of Iowa, a party can be deprived of his property without giving him his day in Court, or that property can be taken for a public use without due compensation, or that provision is not made enabling every one whose property is assessed and taxed, to question the validity of the tax. When traced to its real foundation, the claim asserted by complainants, that without due process of

law, their property is being burdened with assessments is based upon the theory that the laws of Iowa do not afford them ample means for testing the validity of the assessments made, but it is based upon the claim that their property is not within the limits of the City of Des Moines, is not therefore subject to the control of the City authorities and cannot be lawfully assessed or taxed by them. It is manifest, however, that the legality or illegality of the action of the City is dependent upon the question whether the territory of Greenwood Park now forms part of the City of Des Moines, and the existence of this disputed question does not show that the complainants are in any proper sense denied due process of law for the protection of their rights or that they are denied the equal protection of the laws within the meaning of the Federal Constitution.

As the lack of jurisdiction in this Court is thus apparent on the face of the bill, it follows that the motion for an injunction must be denied, the restraining order heretofore granted must be dissolved and the bill itself must be dismissed and it is so ordered.

(Endorsed.) No. 2355, Equity. W M McCain, et al vs. The City of Des Moines, et al. Opinion of Judge Shiras Filed January 11th, 1898. Ed. R. Mason, Clerk.

And on the same day there was entered in said cause the final decree of said Court, dismissing complainants' bill of complaint for want of jurisdiction, which said final decree is in words and figures following, to-wit:

United States Circuit Court, Southern District of Iowa, Central Division.

WALTER M. MCCAIN, CAROLIN M STEWART, EDWARD R. MASON, THE INDEPENDENT SCHOOL DISTRICT OF GREENWOOD AVENUE.	
vs.	
THE CITY OF DES MOINES, GEORGE SIMS AND C. D. BOARDMAN, Constituting the Board of Public Works of the City of Des Moines, THE DES MOINES BRICK MANUFACTURING COMPANY, and the INCORPORATED TOWN OF GREENWOOD PARK.	No. 2355, Equity.

FINAL DECREE.

This cause came on to be heard upon the complainants' motion for a temporary injunction herein and upon the defendants'

demurrer to the bill of complaint herein and the cause was submitted to the court upon complainants' amended and substituted bill filed herein and upon the defendants' demurrer thereto, or so much thereof as is set out in third division thereof raising the question of the jurisdiction of this court and the same was argued by counsel, Wm. G. Clark for complainants and N. T. Guernsey for Des Moines Brick Manufacturing Company, and J. K. Macomber for the City of Des Moines, George Sims and C. D. Boardman constituting the Board of Public Works of the City of Des Moines, and the court being now sufficiently advised in the premises, it is now here ORDERED, ADJUDGED AND DECREED that the complainants' motion for temporary injunction be and the same is hereby denied; that the restraining order heretofore entered herein on the tenth day of December, A. D, 1897, be and the same is hereby set aside, and that so much of defendants' demurrer to the complainants' bill of complaint as raises the question of the jurisdiction of this Court in this cause be, and the same is, hereby sustained, and said complainants electing to stand on their said bill and refusing to further plead, it is further ORDERED,
33 ADJUDGED AND DECREED that the complainants' bill of complaint be, and the same is hereby dismissed for want of jurisdiction in this Court to entertain this cause, with costs, and that the defendants, and each of them go hence without day and recover their costs herein taxed at $....., to all of which the complainant at the time excepted.

Whereupon the said complainants, by their counsel, having filed assignment of errors in open Court prayed an appeal to the Supreme Court of the United States, and also that this cause be certified to said Court as provided in Section Five of the Act of Congress entitled, "An Act to establish Circuit Courts of Appeal " and to define and regulate in certain cases the jurisdiction of " Courts of the United States and for other purposes," approved March 3d, 1891, and said appeal and certificate is allowed, and the said complainants now presenting in open Court a bond in the penal sum of three hundred dollars ($300), with sureties, as provided by law, the same is approved by the Court.

(Signed) O. P. SHIRAS,
U. S. District Judge,
Assigned to Southern District of Iowa.

(Endorsed) 2355, Equity. W. M. McCain, *et al. vs.* City of Des Moines, *et al.* Final Decree. Filed January 11, 1898.
34 E. R. Mason, Clerk.

And upon the request of the complainants, this Court now certifies to the Supreme Court of the United States for its decision the following questions of law:

1st. Do the averments of the amended and substituted bill of

complaint herein filed, show that the controversy or cause of action relied on by complainants arises under the Constitution or laws of the United States in such sense that the Circuit Court of the United States can entertain jurisdiction of the case.

2d. Is the controversy as shown by the averments of the amended and submitted bill, one over which the United States Circuit Court in and for the Southern District of Iowa can rightfully exercise jurisdiction.

It being further certified that the foregoing contains all of the record in said cause upon which the decree of dismissal was based.

Witness the Hon. Oliver P. Shiras, one of the judges of said Court, this 13th day of Jannary, 1898, being one of the days of the November Term, 1897, of said Circuit Court.

(Signed) OLIVER P. SHIRAS, *Judge.*

(Endorsed) No 2355, Equity. W. M McCain, *et al. vs.*
35 City of Des Moines, *et al* Certificate to Supreme Court.
Filed January 14, 1898. E. R. Mason, Clerk.

In the United States Circuit Court, Southern District of Iowa.

WALTER M. MCCAIN, *et al.*,
vs.
THE CITY OF DES MOINES, *et al.* } No. 2355, Equity.

ASSIGNMENT OF ERROR.

The complainants assign as error the following:

1. The Court erred in in holding that the amended and substituted Bill of Complaint herein did not show a controversy or cause of action arising under the Constitution or Laws of the United States, in such sense that the Circuit Court of the United States could entertain jurisdiction thereof

2. The Court erred in holding that the controversy, as shown by the amended and substituted Bill of Complaint was not one which the Circuit Court of the Uhited States for the Southern District of Iowa, could rightfully entertain jurisdiction.

3. The Court erred in dismising Complainants' Bill of Complaint for want of jurisdiction.

(Signed) WISHARD & CLARK,
Solicitors for Complainants.

(Endorsed) 2355, Equity. Walter M. McCain, *et al. vs.*
36 City of Des Moines, *et al.* Assignment of errors. Filed
January 11, 1898. E. R. Mason, Clerk.

Know all men by these presents, that we, Walter M McCain, Caroline M. Stewart, Edward R. Mason, The Independent School District of Greenwood Avenue, as principals and John W. Chase as surety are held and firmly bound unto the City of Des Moines, George Sims and C. D. Boardman, the Board of Public Works of

the said City of Des Moines, The Des Moines Brick Manufacturing Company and the Town of Greenwood Park in the full and just sum of Three Hundred Dollars to be paid to the City of Des Moines, George Sims and C D. Boardman, the Board of Public Works of said City, the Des Moines Brick Manufacturing Company, the Town of Greenwood Park, heirs, executors, administrators, jointly and severally by these presents.

Sealed with our seals and dated this eleventh day of January in the year of our Lord one thousand, eight hundred and ninety-eight.

Whereas, lately at the November Term, A. D., 1897, of the Circuit Court of the United States for the Southern District of Iowa in a suit depending in said Court between Walter M. McCain, Caroline M. Stewart, Edward R. Mason, The Independent District of Greenwood Avenue, plaintiffs, and the City of Des Moines, George Sims and C D. Boardman, The Board of Public Works of said City, The Des Moines Brick Manufacturing Company, The Town of Greenwood Park, defendants, a decree was ren-
37 dered against the said complainants and the said complainants have obtained a certificate and appeal of the said Court to reverse the decree in the aforesaid suit to be and appear in the United States Supreme Court in the City of Washington, D. C., thirty days from and after the date of said certificate and allowance of appeal.

Now the condition and obligation is such that if the said Walter M. McCain, Caroline M. Stewart, Edward R. Mason, Independent District of Greenwood Avenue shall prosecute said appeal to effect, and anwer all damages and costs if they fail to make good their plea, then the above obligation to be void, else to remain in full force and virtue

(Signed) WALTER M. MCCAIN.
CAROLINE M. STEWART. [SEAL]
EDWARD R. MASON. [SEAL]
INDEPENDENT DISTRICT OF GREENWOOD AVENUE,
By Wm. G. Clark, their Solicitor and Attorney of Record.
JNO. W. CHASE,
Surety.

STATE OF IOWA, } ss.
Polk County. }

John W. Chase, surety on the within bond, being duly sworn each for himself deposes and says, that he is worth, after paying his just debts, the sum of Six Hundred Dollars, exclusive of property exempt from execution, by the laws of the State in which he resides.

38 (Signed) JNO. W. CHASE.

Subscribed and sworn to before me by the above named John W. Chase this 11th day of January, 1898.

[SEAL] MAZE VERNON,
Notary Public, Polk County, Iowa.

Approved by
(Signed) O. P. SHIRAS,
U. S. District Judge, Assigned to the Southern District of Iowa.

(Endorsed) No. 2355, Equity. United States Circuit
39 Court, Southern District of Iowa. Walter M. McCain, *et al. vs.* The City of Des Moines *et al.* Bond on appeal. Filed 11th day of January, 1898. E. R. Mason, Clerk.

UNITED STATES CIRCUIT COURT, }
SOUTHERN DISTRICT OF IOWA. } ss.

I, Edward R. Mason, Clerk of the said Court for said district, do hereby certify that the foregoing transcript contains full, true and complete copies of the certificate of said Court, assignment of errors, supersedeas bond, which contains all the pleas, proceedings and record entries in a certain cause in said Court wherein Walter M. McCain, *et al.*, were complainants, and the City of Des Moines, *et al.*, were defendants.

In testimony whereof I hereunto set my hand and affix the seal of said Court at office, in the City of Des Moines, in said District, on this 26th day of January, A. D., 1898.

[SEAL.] EDWARD R. MASON,
40 *Clerk U. S. Circuit Court, Sonthern District of Iowa.*